



INTERIOR BOARD OF INDIAN APPEALS

Jack and Shirley Baker v. Muskogee Area Director, Bureau of Indian Affairs

20 IBIA 237 (09/04/1991)

Denying reconsideration of:
20 IBIA 164

Related Board cases:
19 IBIA 164
39 IBIA 267



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JACK AND SHIRLEY BAKER,
Appellants

v.

ACTING MUSKOGEE AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Denying Petition for
: Reconsideration
:
:
: Docket No. IBIA 91-109-A
:
:
: September 4, 1991

On August 7, 1991, the Board dismissed this appeal as untimely. 20 IBIA 164 (1991). Appellants had filed their notice of appeal with the Office of the Solicitor rather than the Board and, although the notice was forwarded promptly, it was untimely by the time it reached the Board. Noting that the Area Director's decision clearly informed appellants to file their notice of appeal with the Board, the Board stated: "[A] notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations." 20 IBIA at 165.

Appellants seek reconsideration of the dismissal, alleging that (1) the appeal instructions in the Area Director's decision were ambiguous; (2) appellants substantially complied with the service provisions; (3) appellants served every entity except the Board; and (4) appellant's incorrect filing was the fault of the Government, the Area Director, or other entities who were timely served.

Despite appellants' contention to the contrary, the appeal instructions in the Area Director's decision were clear. Appellants' failure to file their notice of appeal with the Board was their own fault, not the fault of the Government. Further, since appellants failed to file their notice with the Board, it simply does not matter how many parties they served.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' petition for reconsideration is denied.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge